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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

AMERICAN CIVIL RIGHTS FOUNDATION,
 a non-profit, public benefit corporation,

Plaintiff,

v.

CITY OF OAKLAND, CALIFORNIA, a
 political subdivision of the State of California,
 and the PORT OF OAKLAND, a public entity,

Defendants.

CASE NO. CV 07-6058 (JCS)

**[PROPOSED] ORDER GRANTING
 DEFENDANTS' MOTION TO DISMISS
 (FRCP 12(b)(6))**

Date: January 18, 2008
 Time: 9:30 A.M.
 Courtroom: A
 Judge: Hon. Joseph C. Spero

1 The Motion of Defendants City of Oakland and Port of Oakland came on regularly for hearing
2 before this Court on January 18, 2008 at 9:30 a.m., with Magistrate Joseph C. Spero presiding.
3 Defendants were represented by Mara E. Rosales and Joseph M. Quinn of Meyers, Nave, Riback,
4 Silver & Wilson; Plaintiff was represented by Sharon L. Browne and Ralph W. Kasarda of Pacific
5 Legal Foundation. After hearing the arguments of the parties as well as the documents submitted in
6 support, opposition to the Motion and reply to the opposition the Court hereby grants the Defendants'
7 Motion to Dismiss the Complaint without leave to amend on the following grounds:

- 8
9 (1) ACRF's claim against the City fails because the City has no responsibility over or
10 for the ACDBE Program that is the subject of ACRF's facial challenge;
- 11 (2) in that there is no "injury in fact" to the members of Plaintiff ACRF, ACRF cannot
12 assume associational standing on their behalf;
- 13 (3) the objected-to race conscious provisions of the program at issue are not ripe for
14 adjudication;
- 15 (4) there is no threat of imminent harm to Plaintiff ACRF or its membership so that
16 injunctive and declaratory relief is inappropriate;
- 17 (5) Plaintiff's Complaint is stale, for failure to file timely; and
18 (6) Plaintiff's State law claims are preempted.

19
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21 IT IS SO ORDERED.

22
23 Dated: _____, 2008

The Honorable Joseph C. Spero